IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 10 of 1996
WITH
SALES TAX REFERENCE No 2 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S.MADHI VIBHAG KHAND UDYOG SAHKARI MANDLI LTD.
Versus
THE STATE OF GUJARAT

Appearance:
1. SALES TAX REFERENCE No. 10 of 1996
SERVED BY RPAD - (N) for Petitioner No. 1
MR SIRAJ GORI, AGP.for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 05/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

These two references are preferred at the instance of the two Cooperative Societies for the year 1973-74. The common question of law referred for our opinion reads as under :

"Whether on the facts and in the circumstances of the case and on proper interpretation of the bye-laws and the modus operandi of the applicant society the Tribunal was right in holding that the amount paid as "Bania Valamani" charges for removal of the tops and leaves of the harvested sugarcane and for leaving them in the fields of the grower-members amounted to purchase price of the sugarcane and if the answer is in the affirmative, whether such purchase price would attract the provisions of Section 18 of the Gujarat Sales Tax Act,1969?"

2 We have heard Mr. Tanvish U.Bhatt, learned Counsel for the applicant-assessee and Mr.Siraj Gori, learned Assistant Government Pleader for the respondent-department.

3 It appears that the judgments from which these references arise were rendered by the Gujarat Sales Tax Tribunal way back in the year 1980 and the reference applications were made before the Tribunal in the same year, but the reference applications came to be granted by the Tribunal much later on 6/12/1994. The Tribunal had rendered its judgment dated 6/3/1980 following its earlier decision in the case of M/s.Khedut Sahakari Khand Udyog Mandali Limited, Bardoli Vs. The State of Gujarat decided on 19-8-1977 holding that any such amount paid by way of 'Bania Varamani' would form part and parcel of the purchase price of the sugarcane paid by the Cooperative Society like the present appellant, that therefore, the appellant would be liable to pay tax under Section 18 of the Gujarat Sales Tax Act,1969.

4 However, in the meantime, in Sales Tax Reference No. 18 of 1979, this Court had an occasion to consider the correctness or otherwise of the Tribunal's judgment in the above matter and by judgment dated 9/10-2-1982 this Court held that the Tribunal was not right in law in holding that payment of the amount as 'Bania Varamani' was a part of the purchase price of the Sugarcane paid by

the assessee to the grower-members. In this view of the matter, the assessee is not liable to pay purchase tax on the aforesaid amount termed as 'Bania Varamani'. Accordingly, the said reference was answered against the State and in favour of the assessee-society.

5 At the hearing of these two references, Mr.Siraj Gori, the learned Assistant Government Pleader is not in a position to show as to why we should not follow the aforesaid decision rendered by this Court in Sales Tax Reference No.18 of 1979. The question arising in the present references is the same as the question which was considered in the aforesaid reference and we see no reason not to take the same view.

6 In the result, we answer the question referred for our opinion in the negative i.e. in favour of the assessee and against the State.

The references accordingly stand disposed off. Registry to place a copy of this judgment in each connected matter.

Sd/-
(M.S.Shah, J)
Sd/-
(D.A.Mehta,J)

m.m.bhatt